

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

TRACKTHINGS LLC,

Plaintiff,

v.

**AMAZON.COM SERVICES LLC, and
EERO LLC,**

Defendants.

Case No. 6:23-cv-00133-ADA

JURY TRIAL DEMANDED

JOINT MOTION FOR ENTRY OF A PARTIALLY OPPOSED SCHEDULING ORDER

Plaintiff TrackThings LLC (“Plaintiff” or “TrackThings”) and Defendants Amazon.com Services LLC, and eero LLC. (“Defendants,” or “Amazon”) respectfully submit this Joint Motion for Entry of a Partially Opposed Scheduling Order. Where there is a dispute, the parties have agreed to submit competing proposals for the Court’s consideration.

I. TRACKTHINGS’ POSITION

This is the second case between TrackThings and Defendants involving the same patents-in-suit and asserted claims (see Civil Action No. 6:21-cv-00720, “the Prior Action”). The parties have agreed that this case can largely pick up where the Prior Action left off, following a short period of supplemental fact discovery, which the parties agree should close on February 2, 2024. TrackThings has proposed a schedule with a cadence that exactly tracks the Court’s Standing Order Governing Proceedings (OGP) for Patent Cases for all subsequent deadlines through a July 8, 2024 trial.

Amazon’s schedule deviates significantly from the OGP, with a proposed trial in November and with interim deadlines also delayed purportedly because of various conflicts that

either Amazon or its counsel may have, many of which appear to be speculative or for cases without a set trial date. TrackThings appreciates that conflicts may arise for both parties and in fact offered four different proposals to Amazon—with trial dates ranging over a two-month period—all to help Amazon avoid its conflicts. But Amazon rejected these proposals and has insisted on a four-month black-out period, with a trial in November. That Amazon or its counsel may have conflicts later does not justify delaying the schedule by four months now. This case and schedule should proceed in the ordinary OGP course, and the parties will continue to work together to address any actual conflicts if and when they arise—an efficient and fair approach for all parties.

II. AMAZON’S POSITION

The parties had agreed in principle to a proposed case schedule through July 5, 2024. The parties disagreed only on the trial date, and the pre-trial deadlines that followed from that. But TrackThings, without warning, reneged on its agreement, and now proposes an unworkable schedule that materially conflicts with scheduling orders and trial settings in other cases involving Amazon and its lead and local counsel. Indeed, Amazon and its counsel have trials scheduled in July, August, September, and October, 2024, making trial in this case before November 2024 extremely difficult.

The schedule in this matter has been suspended for several months. First, the Court dismissed TrackThings’ earlier case against Amazon after TrackThings produced evidence—eighteen months into the case—that it did not own the patents it asserted. TrackThings then filed this case in February 2023, immediately following the hearing on Amazon’s motion to dismiss for lack of standing. (Dkt. 1.) On April 7, 2023, Amazon moved to dismiss for lack of venue and failure to state a claim and to transfer. (Dkt. 31.) The Court denied transfer on November 6, 2023 (Dkt. 59) but TrackThings agreed to dismiss the Amazon parent company, Amazon.com, Inc., (Dkt. 45 at 6) and amended its complaint accordingly (Dkt. 46). While all this occurred, numerous

other cases involving Amazon and its counsel have progressed and set case schedules resulting in the conflicts described below.

TrackThings proposes to disregard these conflicts, assuming, presumably, that schedules will change and trial dates in other matters will move. While that is of course possible, these conflicts are not speculative and Amazon cannot simply assume that other courts will modify scheduling orders. In particular, TrackThings' proposed trial date directly conflicts with at least one existing scheduling order and trial, before the Honorable Judge Ellis of the United States District Court for the Eastern District of Virginia. *See Dialect, LLC v. Amazon.com, Inc.* E.D. Va. No. 1:23-cv-0581 (TSE/LRV), Dkts. 74 (setting June 13, 2024 final pretrial conference), 60 (trial date "will be set for a date certain, within 2–8 weeks of the final pretrial conference"). TrackThings' proposed July 8 trial date falls within the date range where Judge Ellis intends to set trial. Setting trial in this case for July 8 would require Amazon and its counsel to prepare for two complex patent trials in district courts across the country, conducting two trials within the same calendar month. TrackThings' proposed June 14 pretrial conference would also require counsel to conduct pretrial conferences on consecutive days in separate districts. And Amazon's trial counsel in this case, Deron Dacus, is scheduled to conduct a trial starting on July 15 in Marshall before the Honorable Judge Schroeder of the United States District Court for the Eastern District of Texas in *Lightguide, Inc. v. Amazon.com, Inc.*, No. 2:22-cv-RWS-RSP.

After July 2024, Amazon and its attorneys currently have patent trials before this Court set to begin in August, September, and October, all of which, like this case, will command extensive preparation and resources:

- Mr. Dacus is scheduled to begin trial on August 19 in *Voip-Pal.com, Inc. v. Verizon Commc'ns, Inc.*, W.D. Tex. No. 6:21-cv-672-ADA);

- Amazon's lead trial counsel, J. David Hadden and Saina Shamilov, as well as Mr. Dacus, are scheduled to begin trial on August 26 in *Lashify, Inc. v. Qingdao Hollyren Cosmetics Co., Ltd.*, W.D. Tex. Nos. 6:22-cv-00776, 00777-ADA-DTG;
- Amazon and its lead trial counsel are scheduled to begin trial on September 23 in *Zentian Ltd. v. Amazon.com, Inc.*, W.D. Tex. No. 6:22-cv-00123-ADA; and
- Amazon and its lead trial counsel are scheduled to begin trial on October 9 in *MONKEYmedia, Inc. v. Amazon.com, Inc.*, W.D. Tex. No. 1:20-cv-00010-ADA.

Amazon's proposal makes use of the time between pretrial disclosures and filings to allow the parties to narrow the issues for the pretrial conference and for trial. Given its existing court-ordered obligations, Amazon respectfully requests that the Court set this case for trial on November 4, 2024 (or as soon thereafter as practicable) and enter Amazon's proposed schedule.

III. SCHEDULING PROPOSALS

Event	TrackThings' Proposal	Amazon's Proposal
Updated Infringement Contentions.	December 22, 2023	
Updated Invalidity Contentions.	January 19, 2024	
Close of Supplemental Fact Discovery.	February 2, 2024	
Opening Expert Reports.	February 9, 2024	February 23, 2024
Rebuttal Expert Reports.	March 8, 2024	March 22, 2024
Close of Expert Discovery.	March 29, 2024	April 12, 2024
Deadline for the second of two meet and confers to discuss narrowing the number of claims asserted and prior art references at issue to triable limits. To the extent it helps the parties determine these limits, the parties are encouraged to contact the Court's Law Clerk for an estimate of the amount of trial time anticipated per side. The parties shall file a Joint Report within 5 business days regarding the results of the meet and confer.	April 5, 2024	April 26, 2024
Dispositive motion deadline and <i>Daubert</i> motion deadline.	April 12, 2024	May 3, 2024

Event	TrackThings' Proposal	Amazon's Proposal
Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, discovery and deposition designations).	April 26, 2024	May 31, 2024
Parties to jointly email the Court's law clerk (<i>See</i> OGP at 15) to confirm their pretrial conference and trial dates.	May 13, 2024	September 9, 2024
Serve objections to pretrial disclosures/rebuttal disclosures.	May 10, 2024	June 14, 2024
Serve objections to rebuttal disclosures; file Motions <i>in limine</i> .	May 17, 2024	June 21, 2024
File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, discovery and deposition designations); file oppositions to motions <i>in limine</i> .	May 24, 2024	September 6, 2024
File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Kristie Davis at kmdaviscsr@yahoo.com . Deadline to file replies to motions <i>in limine</i> .	May 31, 2024	July 5, 2024
Deadline to meet and confer regarding remaining objections and disputes on motions <i>in limine</i> .	June 7, 2024	October 4, 2024
File joint notice identifying remaining objections to pretrial disclosures and disputes on motions <i>in limine</i> .	June 11, 2024	October 15, 2024
Final Pretrial Conference. Held in person unless otherwise requested.	June 14, 2024 (or as soon as practicable)	October 18, 2024 (or as soon as practicable)

Event	TrackThings' Proposal	Amazon's Proposal
Jury Selection/Trial.	July 8, 2024 (or as soon as practicable)	November 4, 2024 (or as soon as practicable)

Dated: December 28, 2023

/s/ Melissa R. Smith

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on December 28, 2023, to all counsel of record via the Court's CM/ECF system.

/s/ Melissa R. Smith

Melissa R. Smith